



# INTRODUCING UPMIFA

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# PURPOSE OF UMIFA AND UPMIFA IS TO:

- Provide rules for spending endowment funds,
- Provide guidance on investment and management of funds, and
- Permit the release of restrictions on the use and management of charitable funds.



# GENERAL DEFINITIONS

- **True Endowment**: permanent charitable fund whose principal must be preserved in perpetuity as a condition imposed by the contributor.
- **Term Endowment**: same as above but for a fixed term.
- **Quasi Endowment**: fund in which the organization places unrestricted contributions and voluntarily imposes some or all of the conditions of a true or term endowment.



# UMIFA: SCOPE

- Applicable to institutional funds:
  - **Institution**: an incorporated or unincorporated organization organized and operate exclusively for educational, religious, charitable or other eleemosynary purposes, or a governmental organization to the extent it holds funds for any of these purposes.
  - Fund must be held by an institution for its exclusive use, benefit, or purposes.
- An institutional fund does not include a fund held for an institution by a trustee that is not an institution, or a fund in which a beneficiary that is not an institution has an interest.



# UPMIFA: SCOPE

- Applicable to institutional funds:
  - **Institution**: a person, other than an individual, organized and operated for charitable purposes; a government organization to the extent it holds funds for charitable purposes; a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.
  - Fund must be held by an institution exclusively for charitable purposes.
- An institutional fund does not include: program-related assets, fund held for an institution by a trustee that is not an institution, or a fund in which a beneficiary that is not an institution has an interest.



# ENDOWMENTS UNDER UMIFA

- **Endowment Fund**: an institutional fund or any part thereof not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.
- **Gift Instrument**: will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document including the terms of any institutional solicitation under which property is transferred or held by an institution as an institutional fund.



# ENDOWMENTS UNDER UPMIFA

- **Endowment Fund**: an institutional fund or any part thereof that, under the terms of the gift instrument, is not wholly expendable by the institution on a current basis. This term does not include assets that an institution designates as an endowment fund for its own use.
- **Gift Instrument**: a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.



# UMIFA: SPENDING PROVISIONS

- Except where the applicable gift instrument provides otherwise, the governing board may:
  - Appropriate for expenditure so much of the net appreciation, real and unrealized, in the fair value of the assets of an endowment over the historic dollar value of the fund as is prudent.
- **Historic Dollar Value:** the aggregate fair value in dollars of (1) an endowment fund at the time it became an endowment fund, (2) each subsequent donation to the endowment fund at the time it was made, and (3) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the endowment fund.





# UPMIFA: SPENDING PROVISIONS

- Spend or accumulate in prudence: Seven Factors
  - Duration and preservation of the endowment fund
  - Purposes of the institution and endowment fund
  - General economic conditions
  - Possible effect of inflation or deflation
  - Expected total return from income and appreciation of investments
  - Other resources of the institution
  - Institutional investment policy



# UPMIFA: SPENDING PROVISIONS

- Expenditure in any one year of more than 7% of the fair market value of an endowment fund creates a rebuttable presumption of imprudence.
- This does not apply to:
  - Expenditure permitted under law or by the gift instrument
  - Private or public postsecondary educational institution
- No historic dollar value



# UMIFA: INVESTMENT CONDUCT

- Governing board shall:
  - Act with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the institution.
  - Consider the long- and short-term needs of the institution in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, general economic conditions, the appropriateness of a reasonable proportion of higher risk investment with respect to institutional funds as a whole, income, growth and long-term net appreciation, as well as the probable safety of the funds.



# UMIFA: GOVERNING BOARD POWERS

- Except for specific limitations contained in the applicable gift instrument:
  - Invest and reinvest the fund in any real or personal property considered advisable by the governing board, whether or not it produces a current return. This includes mortgages, deeds of trust, stocks, bonds, debentures, and other securities of profit and nonprofit corporations, shares in or obligations of associations or partnerships, and obligations of any government or subdivision or instrumentality thereof.
  - Retain property contributed by the donor for as long as the governing board considers advisable.
  - Place all or portion of the fund in any pooled or common fund maintained by the institution or other entity.



# UPMIFA: INVESTMENT CONDUCT

- In addition to complying with the duty of loyalty, each person responsible shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.
- An institution:
  - May only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution.
  - Shall make a reasonable effort to verify facts relevant to the management and investment of fund.
- Special skills standard of performance: a person who has special skills or expertise has a duty to use those skills or expertise in managing and investing funds.



# UPMIFA: INVESTMENT CONDUCT

- Must consider the following factors: general economic conditions, possible effect of inflation or deflation, tax consequences, overall investment portfolio, expected total return from income and appreciation, other resources of the institution, need to make distributions and preserve capital, and an asset's special relationship to the charitable purposes of the institution.



# UPMIFA: INVESTMENT CONDUCT

- May pool two or more institutional funds for the purposes of management and investment
- May invest in any kind of property or type of investment
- Whole portfolio management required
- Diversification required
- Portfolio balancing required



# UMIFA: DELEGATION

- The governing board may:
  - Delegate to its committees, officers, employees, or agents, including investment counsel, the authority to act in place of the board in investment of funds.
  - Contract with independent investment advisers, investment counsel or managers, banks, or trust companies to exercise its investment management authority.





# UPMIFA: DELEGATION

- The institution may:
  - Delegate management and investment functions to its committees, officers, or employees.
  - Delegate to an external agent the management and investment functions.



## UPMIFA: DELEGATION

- Institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances in:
  - Selecting an agent,
  - Establishing the scope and terms of delegation, and
  - Reviewing and supervising the agent.
- Institution that complies with the above is not liable for the decisions or actions of an agent.
- Agent has the duty of reasonable care.
- Agent is subject to California court jurisdiction.



# UMIFA: RELEASE OF RESTRICTIONS

- Governing board may release restriction if donor consents.
- Court may modify a restriction on the use or investment of the fund if it finds the restriction is obsolete or impracticable.
- Court cannot change an endowment fund into nonendowment fund.
- Doctrine of cy pres is not limited by UMIFA.



# UPMIFA: RELEASE OF RESTRICTIONS

- Institution may release restriction if donor consents.
- Modification of restriction on management or investment
  - Court may modify if restriction is impracticable or wasteful, impairs management or investment, or if due to unanticipated circumstances modification will further purposes of the fund.
  - Notice to Attorney General required.
  - Must be consistent with donor's probable intent.
- Modification of restriction on purpose
  - Court may modify if purpose is unlawful, impracticable, impossible to achieve, or wasteful.
  - Notice to Attorney General is required.
  - Must be consistent with purposes of gift instrument.



## UPMIFA: SMALL, OLD FUND

- Institution may modify if:
  - Restriction is unlawful, impracticable, impossible to achieve, or wasteful,
  - Fund has a value of less than \$100,000,
  - More than 20 years have elapsed since established, and
  - Institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.
- 60-days notice to Attorney General and to donor required.
- No court approval needed.



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